

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

MCKEE FOODS CORPORATION,

Plaintiff,

vs.

**GENERAL REINSURANCE
CORPORATION,**

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

McKee Foods Corporation (“McKee Foods”), by and through counsel, alleges as follows for its Complaint against General Reinsurance Corporation (“GRC”):

PARTIES, JURISDICTION, AND VENUE

1. McKee Foods is a corporation organized and incorporated under the laws of the State of Tennessee with its principal place of business located at 10260 McKee Road, Collegedale, Tennessee 37315.

2. GRC is a corporation organized and incorporated under the laws of the State of Delaware with its principal place of business located at 695 East Main Street, Stamford, Connecticut 06904.

3. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332, because complete diversity of citizenship exists between McKee Foods and GRC, and the amount in controversy exceeds \$75,000.

4. The actions giving rise to McKee Foods’ claims against GRC occurred in this judicial district, and thus venue is proper in this Court under 28 U.S.C. § 1391.

FACTUAL BACKGROUND

5. McKee Foods manufactures Little Debbie® snacks, Sunbelt Bakery™ snacks and cereal, Drake's® cakes, and Heartland® Brand granola and cereal.

6. Under Arkansas and Tennessee law, McKee Foods is authorized to self-insure its workers' compensation risks.

7. On October 23, 1995, GRC sold McKee Foods a policy of insurance titled "Excess Insurance Policy for Self-Insurer of Workers' Compensation and Employers Liability" and numbered DX-014273A-F, which had an initial policy period of September 30, 1995, to July 1, 1996, and renewed annually through July 1, 2002 ("the Policy"). A copy of the Policy and all related endorsements are attached to this Complaint as **Collective Exhibit A**.

8. The Policy applied "to losses paid by [McKee Foods] as a qualified self-insurer under the Workers [sic] Compensation Law for bodily injury by accident or bodily injury by disease including resulting death, provided: 1. The bodily injury by accident occurs during the period [the Policy] is in force; or 2. The bodily injury by disease is caused or aggravated by the conditions of employment by [McKee Foods]"¹

9. The Policy obligated GRC to "indemnify [McKee Foods] for loss as a qualified self-insurer under the Workers [sic] Compensation Law" in excess of McKee Foods' \$250,000 retention.²

10. The Policy initially defined "loss" as "amounts actually paid by [McKee Foods] as a self-insurer under the Workers [sic] Compensation Law."³

¹ Policy [Ex. A], Part One, § C.

² Policy [Ex. A], Part One, § A; Info. Page, Item 6.

³ Policy [Ex. A], Part One, § B.

11. Effective July 1, 1996, and continuing through July 1, 2002, the Policy defined “loss” and “claim expenses” as follows:

11.1 “Loss means amounts, including related claim expenses, actually paid by [McKee Foods] as self-insurer under the Workers [sic] Compensation Law.”⁴

11.2 “Claim expenses of McKee Foods means its litigation costs, interest as required by law on awards or judgements [sic], and its special claim investigation or legal expenses which can be directly allocated to a specific claim. Claim expenses exclude: Salaries and travel expenses of employees of [McKee Foods], annual retainers, overhead and any fees paid to [McKee Foods’] service Company.”⁵

12. Effective July 1, 1996, and continuing through July 1, 2002, the Policy provided that GRC was required “to indemnify [McKee Foods] for any loss under [the Policy]” as follows:

[McKee Foods] will pay all benefits, including related claim expenses, required of [McKee Foods] by the Workers [sic] Compensation Law. The indemnity by [GRC] will be made at monthly intervals after [GRC] has received proofs of payments by [McKee Foods]⁶

13. At all relevant times, Genesis Management and Insurance Services Corporation (“Genesis”) was the third-party claims administrator for GRC. For purposes of this Complaint, GRC and Genesis are collectively referred to as “GRC.”

14. On June 30, 2011, McKee Foods hired Cannon Cochran Management Services, Inc. (“CCMSI”) as its third-party claims administrator. For the purposes of this Complaint, McKee Foods and CCMSI are collectively referred to as “McKee Foods.”

⁴ Policy [Ex. A], Endorsement No. 9.

⁵ Id.

⁶ Id.

15. McKee Foods has provided GRC with proofs of payments made relating to ten workers' compensation claims in which the payments by McKee Foods exceeded of the \$250,000 retention. Each of these ten workers' compensation claims are separately delineated below in paragraphs 17 to 106.

16. GRC has refused, and continues to refuse, to indemnify McKee Foods for losses in excess of the \$250,000 retention relating to the ten below-referenced workers' compensation claims, despite being obligated to do so under the Policy.

WORKERS' COMPENSATION CLAIM NO. 1 – REGINA D. ANGELIN

17. On August 30, 1997, Regina D. Angelin suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

18. Ms. Angelin filed a claim against McKee Foods seeking workers' compensation benefits.

19. McKee Foods has paid the total amount of \$532,134.47 for Ms. Angelin's workers' compensation claim, which exceeds McKee Foods' retention by \$282,134.47.

20. This total amount – \$532,134.47 – constitutes a "loss" as defined by the Policy.

21. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for all loss for Ms. Angelin's workers' compensation claim that exceeded the \$250,000 retention.

22. In total, McKee Foods requested indemnity from GRC in the amount of \$282,134.47.

23. GRC only paid McKee Foods the total amount of \$222,831.66.

24. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining

\$59,302.81 due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

25. Ms. Angelin's workers' compensation claim is closed, and therefore McKee Foods does not continue to incur any loss relating to her claim.

WORKERS' COMPENSATION CLAIM NO. 2 – JANICE D. TERRY

26. On March 10, 1998, Janice Terry suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

27. Ms. Terry filed a claim against McKee Foods seeking workers' compensation benefits.

28. As of June 1, 2017, McKee Foods has paid the total amount of \$335,573.34 for Ms. Terry's workers' compensation claim, which exceeds McKee Foods' retention by \$85,573.34.

29. This total amount – \$335,573.34 – constitutes a "loss" as defined by the Policy.

30. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for all loss for Ms. Terry's workers' compensation claim that exceeded the \$250,000 retention.

31. In total, McKee Foods requested indemnity from GRC in the amount of \$85,573.34.

32. GRC only paid McKee Foods the total amount of \$41,008.22.

33. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining \$44,565.12 presently due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

34. Ms. Terry's workers' compensation claim remains open, and therefore McKee Foods continues to incur loss relating to her claim.

WORKERS' COMPENSATION CLAIM NO. 3 – RUBY JEAN HEFNER

35. On March 10, 1998, Ruby Jean Hefner suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

36. Ms. Hefner filed a claim against McKee Foods seeking workers' compensation benefits.

37. As of June 1, 2017, McKee Foods has paid the total amount of \$546,543.66 for Ms. Hefner's workers' compensation claim, which exceeds McKee Foods' retention by \$296,543.66.

38. This total amount – \$546,543.66 – constitutes a “loss” as defined by the Policy.

39. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for all loss for Ms. Hefner's workers' compensation claim that exceeded the \$250,000 retention.

40. In total, McKee Foods requested indemnity from GRC in the amount of \$296,543.66.

41. GRC only paid McKee Foods the total amount of \$231,202.74.

42. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining \$65,340.92 presently due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

43. Ms. Hefner's workers' compensation claim remains open, and therefore McKee Foods continues to incur loss relating to her claim.

WORKERS' COMPENSATION CLAIM NO. 4 – ELEANOR GRAVES

44. On September 27, 1999, Eleanor Graves suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

45. Ms. Graves filed a claim against McKee Foods seeking workers' compensation benefits.

46. As of June 1, 2017, McKee Foods has paid the total amount of \$558,687.83 for Ms. Graves' workers' compensation claim, which exceeds McKee Foods' retention by \$308,687.83.

47. This total amount – \$558,687.83 – constitutes a “loss” as defined by the Policy.

48. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for all loss for Ms. Graves' workers' compensation claim that exceeded the \$250,000 retention.

49. In total, McKee Foods requested indemnity from GRC in the amount of \$308,687.83.

50. GRC only paid McKee Foods the total amount of \$225,864.05.

51. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining \$82,823.78 presently due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

52. Ms. Graves' workers' compensation claim remains open, and therefore McKee Foods continues to incur loss relating to her claim.

WORKERS' COMPENSATION CLAIM NO. 5 – WILLIAM WADE

53. On April 22, 2002, William Wade suffered an injury by accident arising out of and occurring in the course and scope of his employment at McKee Foods.

54. Mr. Wade filed a claim against McKee Foods seeking workers' compensation benefits.

55. As of June 1, 2017, McKee Foods has paid the total amount of \$424,226.35 for Mr. Wade's workers' compensation claim, which exceeds McKee Foods' retention by \$174,226.35.

56. This total amount – \$424,226.35 – constitutes a "loss" as defined by the Policy.

57. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for all loss for Mr. Wade's workers' compensation claim that exceeded the \$250,000 retention.

58. In total, McKee Foods requested indemnity from GRC in the amount of \$174,226.35.

59. GRC only paid McKee Foods the total amount of \$148,027.00.

60. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining \$26,199.35 presently due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

61. Mr. Wade's workers' compensation claim remains open, and therefore McKee Foods continues to incur loss relating to his claim.

WORKERS' COMPENSATION CLAIM NO. 6 – KATHY BARNES

62. On February 18, 1998, Kathy Barnes suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

63. Ms. Barnes filed a claim against McKee Foods seeking workers' compensation benefits.

64. As of June 1, 2017, McKee Foods has paid the total amount of \$1,186,486.90 as loss for Ms. Barnes' workers' compensation claim, which exceeds McKee Foods' retention by \$936,486.90.

65. This total amount – \$1,196,257.72 – constitutes a “loss” as defined by the Policy.

66. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for all loss for Ms. Barnes' workers' compensation claim that exceeded the \$250,000 retention.

67. In total, McKee Foods requested indemnity from GRC in the amount of \$946,257.72.

68. GRC only paid McKee Foods the total amount of \$889,793.24.

69. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining \$56,464.48 presently due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

70. Ms. Barnes' workers' compensation claim remains open, and therefore McKee Foods continues to incur loss relating to her claim.

WORKERS' COMPENSATION CLAIM NO. 7 – SHEILA OWENS

71. On September 5, 2000, Shelia Owens suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

72. Ms. Owens filed a claim against McKee Foods seeking workers' compensation benefits.

73. As of June 1, 2017, McKee Foods has paid the total amount of \$439,559.79 as loss for Ms. Owens' workers' compensation claim, which exceeds McKee Foods' retention by \$189,559.79.

74. This total amount – \$439,559.79 – constitutes a “loss” as defined by the Policy.

75. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for all loss for Ms. Owens' workers' compensation claim that exceeded the \$250,000 retention.

76. In total, McKee Foods requested indemnity from GRC in the amount of \$189,559.79.

77. GRC only paid McKee Foods the total amount of \$168,875.67.

78. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining \$20,684.12 presently due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

79. Ms. Owens' workers' compensation claim remains open, and therefore McKee Foods continues to incur loss relating to her claim.

WORKERS' COMPENSATION CLAIM NO. 8 – ANNETTE JACKSON

80. On July 14, 1999, Annette Jackson suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

81. Ms. Jackson filed a claim against McKee Foods seeking workers' compensation benefits.

82. McKee Foods has paid the total amount of \$716,129.00 as loss for Ms. Jackson's workers' compensation claim, which exceeds McKee Foods' retention by \$466,129.00.

83. This total amount – \$716,129.00 – constitutes a "loss" as defined by the Policy.

84. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for loss for Ms. Jackson's workers' compensation claim that exceeded the \$250,000 retention.

85. In total, McKee Foods requested indemnity from GRC in the amount of \$466,129.00.

86. GRC only paid McKee Foods the total amount of \$462,099.80.

87. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the remaining \$4,029.20 due and owing under the Policy, and continues to claim that it has no additional or further obligation to indemnify McKee Foods.

88. Ms. Jackson's workers' compensation claim is closed, and therefore McKee Foods does not continue to incur any loss relating to her claim.

WORKERS' COMPENSATION CLAIM NO. 9 – RICHARD PERRY

89. On August 16, 2001, Richard Perry suffered an injury by disease aggravated by the conditions of his employment at McKee Foods.

90. Mr. Perry filed a claim against McKee Foods seeking workers' compensation benefits.

91. As of June 1, 2017, McKee Foods has paid the total amount of \$310,249.92 as loss for Mr. Perry's workers' compensation claim, which exceeds McKee Foods' retention by \$60,249.92.

92. This total amount – \$310,249.92 – constitutes a “loss” as defined by the Policy.

93. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for loss for Mr. Perry's workers' compensation claim that exceeded the \$250,000 retention.

94. In total, McKee Foods requested indemnity from GRC in the amount of \$60,249.92.

95. GRC has not paid McKee Foods any amount.

96. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the \$60,249.92 presently due and owing under the Policy, and continues to claim that it has no obligation to indemnify McKee Foods.

97. Mr. Perry's workers' compensation claim remains open, and therefore McKee Foods continues to incur loss relating to his claim.

WORKERS' COMPENSATION CLAIM NO. 10 – CONNIE WARE

98. On August 14, 1998, Connie Ware suffered an injury by accident arising out of and occurring in the course and scope of her employment at McKee Foods.

99. Ms. Ware filed a claim against McKee Foods seeking workers' compensation benefits.

100. As of June 1, 2017, McKee Foods has paid the total amount of \$276,427.89 as loss for Ms. Ware's workers' compensation claim, which exceeds McKee Foods' retention by \$26,427.89.

101. This total amount – \$276,427.89 – constitutes a “loss” as defined by the Policy.

102. On multiple occasions, McKee Foods provided GRC with proofs of payments and requested indemnity from GRC for loss for Ms. Ware's workers' compensation claim that exceeded the \$250,000 retention.

103. In total, McKee Foods requested indemnity from GRC in the amount of \$26,427.89.

104. GRC has not paid McKee Foods any amount.

105. Despite McKee Foods' satisfaction of all conditions precedent for indemnity, GRC has refused, and continues to refuse, to indemnify McKee Foods for the \$26,427.89 presently due and owing under the Policy, and continues to claim that it has no obligation to indemnify McKee Foods.

106. Ms. Ware's workers' compensation claim remains open, and therefore McKee Foods continue to incur loss relating to her claim.

COUNT I – BREACH OF CONTRACT

107. McKee Foods incorporates by reference the allegations in paragraphs 1- 106 as if fully set forth herein.

108. The Policy is a valid and binding contract between McKee Foods and GRC.

109. GRC breached the Policy by refusing to indemnify McKee Foods for losses as defined by the Policy relating to the workers' compensation claims set forth in paragraphs 17 – 106.

110. GRC also breached the Policy by failing to comply with its duty of good faith and fair dealing.

111. GRC's breaches of the Policy constitute material breaches.

112. GRC's breaches of the Policy caused damages to McKee Foods.

113. GRC's conduct in this matter was done either willfully, intentionally, or recklessly with a knowing disregard of GRC's obligations to McKee Foods, thus entitling McKee Foods to an award of punitive damages.

COUNT II – VIOLATION OF TENN. CODE ANN. § 56-7-105

114. McKee Foods incorporates by reference the allegations contained in paragraphs 1-113 as if fully set forth herein.

115. GRC is an insurance company doing business in the State of Tennessee.

116. GRC refused to indemnify McKee Foods in accordance with the terms of the Policy within sixty days after McKee Foods made a demand for indemnity.

117. GRC's refusal to reimburse McKee Foods was in bad faith.

118. As a direct and proximate result of GRC's bad faith refusal to reimburse McKee Foods, McKee Foods has accrued, and will continue to accrue, additional expense, loss, or injury, including attorney fees.

COUNT III – DECLARATORY RELIEF

119. McKee Foods incorporates by reference the allegations in paragraphs 1-118 as if fully set forth herein.

120. A justiciable controversy exists between McKee Foods and GRC concerning GRC's duty under the Policy to indemnify McKee Foods for losses in excess of McKee Foods' \$250,000 retention.

121. McKee Foods seeks a judicial determination to resolve a present justiciable controversy regarding the coverage owed under the Policy.

122. McKee Foods is entitled to a judicial declaration by the Court that GRC is obligated to provide the benefits of its insurance coverage under the Policy.

123. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy among the parties.

PRAYER FOR RELIEF

WHEREFORE, McKee Foods prays:

1. For process to issue and be served on GRC, requiring GRC to answer the allegations in the Complaint.

2. For an award in favor of McKee Foods, and against GRC, for all compensatory and consequential damages incurred by McKee Foods as a result of GRC's breaches of the Policy, in an amount of at least \$446,087.59, plus pre-judgment and post-judgment interest.

3. For a judgment that GRC's refusal to indemnify McKee Foods violated Tenn. Code Ann. § 56-7-105, and an award of all loss and interest to McKee Foods, in addition to the statutory penalty of 25% of the loss, including attorneys' fees.

4. For a declaratory judgment that GRC must provide, and continue to provide, indemnity for McKee Foods for the currently open workers' compensation claims for all losses, as defined under the Policy, that exceed the \$250,000 retention.

5. For an award of attorneys' fees and all costs and interest as recoverable under law.

6. For an award of punitive damages in favor of McKee Foods and against GRC, in an amount to be proven at trial.

7. All other and further relief as the Court may deem equitable, just, and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

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